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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 26, 2002

PETITION OF

COURTHOUSE COMMUNITY ESTATES
ASSOCIATION, INC.

CASE NO. PUE-2002-00417

For injunction against Virginia
Electric and Power Company d/b/a
Dominion Virginia Power and for
Revocation of approval to construct
and for Revocation of certificate of
public convenience and necessity for
the Landstown-West Landing 230 kV
transmission line and West Landing
substation

FINAL ORDER

Before the Commission is the Petition of Courthouse Estates
Community Association, Inc., for Injunction Against Virginia
Electric and Power Company d/b/a Dominion Virginia Power [sic]
and for Revocation of Approval to Construct and Revocation of a
Certificate of Public Convenience and Necessity for the
Landstown-West Landing 230 kV Transmission Line and West Landing
Substation ("Petition") filed on July 16, 2002. Courthouse
Estates Community Association, Inc. ("Courthouse Estates"),
asked the Commission to enjoin the construction of a
transmission line and to revoke the certificate of public
convenience and necessity authorizing construction and operation
of the line. On August 6, 2002, Virginia Electric and Power

Company, d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company"), filed its answer to the Petition and a Motion to Dismiss. Courthouse Estates subsequently filed a reply to the motion to dismiss, and Dominion Virginia Power filed a response. In addition, Courthouse Estates moved on September 4, 2002, for leave to amend its petition. Dominion Virginia Power opposed amendment.

The Commission has considered the Petition and the other pleadings. As we discuss in this Final Order, the Commission will grant Courthouse Estates' motion to amend its Petition. The Commission also will grant the Company's motion to dismiss.

According to the Petition, at 2-3, Courthouse Estates is an association of the owners of homes in the Courthouse Estates subdivision in the City of Virginia Beach. Construction of homes in the subdivision began in 1994. As explained by Courthouse Estates, Dominion Virginia Power is authorized to construct and operate the Landstown-West Landing 230 kV Transmission Line, which would cross some lots in the Courthouse Estates subdivision. The right-of-way of the line would be adjacent to at least 105 homes in the subdivision. (Id. at 3 and Attachment C.)

The Commission authorized Dominion Virginia Power to construct and operate the Landstown-West Landing line and granted a certificate of public convenience and necessity by

Order Granting Application of January 28, 1992, Virginia Elec. & Power Co., Case No. PUE-1991-00014, 1992 S.C.C. Ann. Rep. 267.

We did not require construction by a certain date or provide for revocation of authority if construction had not commenced by a certain date.

In support of its prayer to the Commission to enjoin Dominion Virginia Power from constructing the line, Courthouse Estates contends that residential development along the segment of the approved route crossing and adjacent to the Courthouse Estates subdivision forecloses construction. (Petition at 6-7.) Courthouse Estates argues that § 56-46.1 of the Code of Virginia ("Code") requires the Commission to consider at any time the impact of a proposed transmission line on the environment, and § 56-46.1 E empowers the Commission to consider a different route with reduced adverse impact. (Id. at 8.)

Courthouse Estates also argues that the certificate granted for the Landstown-West Landing line in Case No. PUE-1991-00014 should be revoked as provided by § 56-265.6 of the Code. Dominion Virginia Power, in the view of Courthouse Estates, willfully misrepresented material facts in its application for the certificate: (1) the Company misrepresented the date for putting the line in service -- while Dominion Virginia Power maintained that the line was needed by 1997, the Company had not constructed the line (id. at 8-9.); and (2) Dominion Virginia

Power stated in a study supporting the application that the line would not be constructed within 120 feet of a residence.

Courthouse Estates implies that construction along the approved route requires the line to pass within 120 feet or less of residences. (Id. at 9.)

Dominion Virginia Power filed an answer to the petition, and substantive arguments are set out in its Motion to Dismiss of August 6, 2002. The Company first relates the history of Case No. PUE-1991-00014 and argues that all requirements of §§ 56-46.1 and 56-265.2 of the Code were satisfied. (Motion to Dismiss at 2-5.) The Company also maintains that Courthouse Estates does not identify any basis for revocation of its certificate as provided by § 56-265.6 of the Code. (Id. at 5-8.)

According to the Company, there is no merit in Courthouse Estates' argument that the need for the line was misrepresented in the application. Dominion Virginia Power's application in Case No. PUE-1991-00014 included projections of growth in demand based on information on development in Virginia Beach available in 1991. Slower growth in actual demand than projected is not a willful misrepresentation to the Commission. (Id. at 7.) With regard to proximity to residences, the Company again states that no fact was misrepresented. The route proposed in 1991 did not come within 120 feet of any residence then in existence.

Further, Dominion Virginia Power included in its application for the certificate information on the Courthouse Estates subdivision, which was then only proposed, and the proximity of the proposed line. (Id. and Attachment 3.)

Dominion Virginia Power also argues that § 56-46.1 E, which permits Commission consideration of alternative routings, does not apply beyond the time that the Commission grants the requested certificate. (Id. at 8-9.) Dominion Virginia Power also argues that § 56-247 of the Code, which empowers the Commission to correct practices after an investigation supports a finding of unreasonableness, cannot be invoked in lieu of § 56-265.6 to suspend or revoke a certificate. (Id.) Finally, the Company maintains that Courthouse Estates improperly invoked the Commission's injunctive powers and the doctrine of laches. (Id. at 10.)

As noted, the Commission will grant Courthouse Estates' motion to amend its petition. Our Rules of Practice and Procedure, 5 VAC 5-20-130, *Amendment of pleadings*, provide that leave to amend should be liberally granted. In its reply to the motion to amend, Dominion Virginia Power does not establish that it would be prejudiced by its own document. In addition, the Company addresses the substance of the amendment in its response to the motion, and the Commission has a complete record.

The Commission's conclusion that Dominion Virginia Power's motion to dismiss the petition should be granted follows from the statutes cited by the Company and Courthouse Estates. The Commission has discussed at length its responsibilities for the approval of proposed transmission lines pursuant to §§ 56-265.2 and 56-46.1 of the Code. See Appalachian Power Co., Case No. PUE-1997-00766, 2001 S.C.C. Ann. Rep. 366, 367-68. We explained in that order that the two statutes are interrelated, and that the Commission must consider the statutory criteria in both sections as a part of the whole. The approval process leading to the issuance of a certificate of convenience and necessity cannot be divided into approval under one section or the other, as Courthouse Estates urges.

The interrelated nature of the two provisions of the Code extends to the timing and notice requirements for the Commission's proceedings. Various provisions of § 56-46.1 supplement the general requirements for notice and an opportunity for hearing setout in § 56-265.2 A. Among other requirements, § 56-46.1 E provides for additional notice and procedural rights to affected persons if it appears that a different route should be considered. An example of the application of these requirements is found in the decision cited above, Appalachian Power Co., 2001 S.C.C. Ann. Rep. at 366, 372.

Courthouses Estates erroneously argues that this supplemental notice requirement for a different route confers continuing jurisdiction over the routing of a line after the final order and the certificate of convenience and necessity are issued. By its own wording, subsection E of § 56-46.1 provides only for notice and participation on an equal basis if the Commission considers different routes before making a final decision and issuing a certificate of public convenience and necessity. Under Courthouse Estates' argument, it appears that an order permitting construction of a transmission line would never be final.

As Courthouse Estates argues, § 56-265.6 of the Code empowers us to investigate its allegation of willful misrepresentation of a material fact in obtaining the certificate. If such a misrepresentation is established, the Commission may impose sanctions, which may include revocation of the certificate previously issued. Courthouse Estates alleges in its Petition two willful misrepresentations made by Virginia power to obtain the certificate. First, the Company stated that the line was needed by 1997 and would be built by 1997. Next, Dominion Virginia Power represented that the line would not be within 120 feet of a residence.

As discussed previously, Dominion Virginia Power addressed both contentions in its motion to dismiss, and we find these

explanations establish that the Company made no misrepresentations. The Company's 1991 application and virtually all other Commission proceedings concerning approval of facilities involve projections of future events. The Commission expects projections to reflect sound assumptions and methodology, but experience teaches that projections may be in error. Courthouse Estates does no more than point to a statement on the projected need and year of construction which did not come to pass. In light of the Commission's experience with utility projections, missing this projected construction date for a transmission project does not raise a factual issue or establish a misrepresentation.

Turning to Courthouse Estates' second allegation, proximity of the line to residences, the Company showed that the quotation referred to proximity to residences existing at the time the application was filed. The Commission sees no factual issue that merits further development.

Courthouse Estates advances an argument based on the powers conferred on the Commission by § 56-247 of the Code to order substitutions and changes in a public utility's "regulations, measurements, practices, service or acts." This power may be exercised upon complaint and after investigation. Courthouse Estates contends that the Company's delay in construction since a certificate of convenience and necessity in 1992 is an

"unjust, unreasonable [and] insufficient . . ." practice.
(Petition at 9.)

The Commission is bound by the words of the statute. See Commonwealth ex rel. Northern Va. Elec. Coop. v. Virginia Elec. & Power Co., Case No. PUE-2001-00512, Final Order of May 1, 2002, at 18. The Commission cannot exercise the powers conferred by § 56-247 as Courthouse Estates would wish. The Code of Virginia, § 56-235.1, and the decisions of this Commission in numerous cases direct utilities to conserve resources and to construct facilities only when required for efficient and reliable service. Dominion Virginia Power stated in its pleadings that construction was deferred when expected growth did not materialize and future development was uncertain. While we recognize that this delay has caused concern and uncertainty in the Courthouse Estates subdivision, the Commission cannot find that deferral of construction until growth requires is an unjust or unreasonable practice. In the case before us, the Commission finds that § 56-247 is inapplicable.¹

In its amendment to the petition filed on September 4, 2002, Courthouse Estates adds allegations that Dominion Virginia Power has proposed to the U.S. Army Corps of Engineers a

¹ In addition, we reject Courthouse Estates' claim that the doctrine of laches supports its request herein.

realignment of a segment of the proposed Landstown-West Landing line. The amendment includes as "Exhibit A" a letter of June 28, 2002, with attachments, from Dominion Virginia Power to the Corps of Engineers.

While the Company states in its letter that the realignment is within the bounds of the certificate issued in 1992, Courthouse Estates differs. Courthouse Estates suggests that the proposal to the Corps of Engineers evidences, according to the amendments, that Dominion Virginia Power intends to violate §§ 56-46.1 B and 56-265.2 of the Code. As Dominion Virginia Power noted in its reply to the motion to amend, the letter was part of continuing negotiations over wetlands permits. It is speculation to assume that any change in the routing of a segment of the line some distance away will affect the Courthouse Estates subdivision. To act on the Petition before the Commission, we need not reach the issue of whether a possible realignment discussed in the Company-Corps of Engineers correspondence complies with the 1992 certificate for the Landstown-West Landing line. The Commission does not accept Courthouse Estates' invitation to presume that there is now or will be a violation of law. We have no basis to assume that Dominion Virginia Power will not (1) comply with the 1992 certificate, or (2) seek proper authorization for any altered routing. The Commission has adequate authority to act if the

Company does not comply with all of the terms of the certificate.

While the Commission will dismiss the Petition, we recognize that the delay in construction has been a cause for concern. The Commission has continued to refine its process for considering applications for approval of transmission lines since 1992. The Commission now routinely includes as conditions of the certificate an expiration date for the authority conferred as well as other obligations. See Virginia Electric & Power Co., Case No. PUE-2002-00180, Final Order of July 16, 2002. The Commission cannot now add conditions to the certificate issued on January 28, 1992, which authorized the Landstown-West Landing line.

There are, however, a number of conditions on the certificate and the authority to construct and operate imposed by operation of law. As required by § 56-46.2 of the Code, Dominion Virginia Power must adhere to the National Electrical Safety Code in constructing the Landstown-West Landing line. The Company is limited by § 56-49(2) of the Code in condemning right-of-way within 60 feet of a dwelling. These provisions of law require spacing between the transmission line and adjacent structures. While § 56-46.1 F of the Code provides that approval of the line satisfies the requirements of the City of Virginia Beach's zoning ordinance, Dominion Virginia Power is

not exempt from any other local requirements. Finally, the Commission has long held that approval to construct a line pursuant to §§ 56-46.1 and 56-265.2 of the Code does not exempt the utility from complying with all local, state, and federal environmental requirements. Thus, there are numerous constraints on Dominion Virginia Power in constructing and operating the Landstown-West Landing line.

Accordingly, IT IS ORDERED THAT:

(1) The motion of Courthouse Estates for leave to amend its petition filed on September 4, 2002, is granted.

(2) The motion to dismiss the petition filed by Dominion Virginia Power on August 6, 2002, is granted, and this matter is dismissed and removed from the list of pending cases.